

**Remarks**

In view of the above amendments and the following remarks, reconsideration of the objection and rejections, and further examination are requested.

The title of the application has been amended. No new matter has been added by this amendment.

The specification and abstract have been reviewed and revised to make a number of editorial revisions thereto. A substitute specification and abstract including the revisions have been prepared and are submitted herewith. No new matter has been added. Also submitted herewith are marked-up copies of the substitute specification and abstract indicating the changes incorporated therein.

Claims 9, 10 and 13 have been objected to as including a number of informalities. Claims 9, 10 and 13 have been amended so as to address the objection. No new matter has been added. As a result, withdrawal of the objection to claims 9, 10 and 13 is respectfully requested.

Claims 1, 2, 7-25 and 31 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 1 has been amended so as to remove the recitation of the electromagnetic wave-reflecting layer and to recite first and second layers formed of metal clusters. No new matter has been added. As a result, withdrawal of the rejection of claims 1, 2, 7-25 and 31 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Claim 7 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 7 has been amended so as to remove the recitation of the cover layer to address this rejection. No new matter has been added. As a result, withdrawal of the rejection of claim 7 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Claim 18 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claim 18 has been amended so as to address the rejection. No new matter has been added. As a result, withdrawal of the rejection of claim 18 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Further, it is noted that claims 1-35 have been amended to make a number of editorial and grammatical amendments thereto. No new matter has been added.

Claim 1, 2, 8-22, 24 and 31 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Heim (US 2005/0151368) in view of Mayer (US 6,565,770).

This rejection is submitted to be inapplicable to the claims for the following reasons.

Claim 1 is patentable over the combination of Heim and Mayer, since claim 1 recites a forgery-proof security element including, in part, at least one of a polymeric spacer layer, a first layer formed of metal clusters, and a second layer formed of metal clusters that provides a security feature selected from the group of an electrically conductive security feature, a luminescent security feature and a forensic security feature. The combination of Heim and Mayer fails to disclose or suggest a security feature as recited in claim 1.

Heim discloses a security element 2 having a layered structure including a transparent substrate S, an absorber layer A2, a dielectric layer D and an absorber layer A1. (See paragraphs [0017], [0057], [0058] and [0063] and Figure 5). However, Heim fails to disclose or suggest that any of the absorber layers A1 and A2 and the dielectric layer D provides a security feature selected from the group of an electrically conductive security feature, a luminescent security feature and a forensic security feature. Therefore, Mayer must disclose or suggest this feature.

Regarding Mayer, it is relied upon in the rejection as disclosing a dielectric layer 54a, 54b formed of a polymer. (See column 8, lines 29-44 and Figure 2). However, Mayer also fails to disclose or suggest the above-discussed feature lacking from Heim. Since Mayer fails to address the deficiency of Heim, claim 1 is patentable over the combination of Heim and Mayer.

Claim 7 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Heim in view of Mayer and further in view of Chen (US 4,792,667).

Regarding this rejection, Chen fails to address the deficiency noted above with regard to the combination of Heim and Mayer. Therefore, claim 7 is patentable over the combination of Heim, Mayer and Chen based at least on its dependency from claim 1.

Claims 23 and 25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Heim in view of Mayer and further in view of Adamczyk (US 2004/0050269).

Regarding this rejection, Adamczyk fails to address the deficiency noted above with regard to the combination of Heim and Mayer. Therefore, claims 23 and 25 are patentable over the combination of Heim, Mayer and Adamczyk based at least on their dependency from claim 1.

Regarding withdrawn claims 3-6, 26-30 and 32-35, it is submitted that these claims should be given due consideration based on their dependency from allowable claim 1.

Because of the above-mentioned distinctions, it is believed clear that claims 1-35 are allowable over the references relied upon in the rejections. Furthermore, it is submitted that the distinctions are such that a person having ordinary skill in the art at the time of invention would not have been motivated to make any combination of the references of record in such a manner as to result in, or otherwise render obvious, the present invention as recited in claims 1-35. Therefore, it is submitted that claims 1-35 are clearly allowable over the prior art of record.

In view of the above amendments and remarks, it is submitted that the present application is now in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that there are issues remaining which must be resolved before allowance of the application.

Respectfully submitted,

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